IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6737 OF 2005

Virendranath Bhagwat Prasad Tiwari ...Applicant
Vs.
The State of Maharashtra ...Respondent

Mr K. P. Tiwari for the Applicant.
Ms M. M. Deshmukh, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : OCTOBER 14, 2005.

P.C.:

1. Heard the Advocate appearing for the Applicant and the learned A.P.P. for the State. The Applicant is a practising advocate. Offence has been registered under sections 465, 467, 468, 471, 420, 406 read with section 34 of the Indian Penal Code. The offence has been registered at the instance of the State Bank of India. The co-acused submitted an Agreement of Sale inrespect of a flat and other documents to the said Bank for obtaining housing loan. The original documents were forwarded by the Bank to the Applicant who was a Panel Advocate of the Bank for verification of title. The case of the prosecution is that the documents which were submitted by the borrower (co-acused) were found to be fabricated. The allegation against the Applicant is that he has cheated the Bank by not verifying the documents.

2. The learned Advocate for the Applicant

submitted that at highest the Applicant might have committed an error in issuing a title report and it was not the duty of the Applicant to verify whether the documents forwarded by the Bank were genuine. The learned A.P.P. submitted that the Applicant was duty bound to verify whether the documents which were forwarded by the Bank were genuine documents, and without verification of the genuineness of the documents, he has issued a title report stating that the title of borrower to the flat in question is clear and marketable. The learned A.P.P. submitted that co-accused are absconding and therefore, no case is made out for granting of Anticipatory Bail as allegations against the Applicant are of very serious nature.

3. I have considered the submissions. I have also perused the original documents which are taken in custody by the Investigating officer. Prima facie, it appears to me that the documents were forwarded by the Bank to the Applicant for opinion regarding title. The case of the Applicant appears to be that his search clerk took search in the Office of Sub-Registrar by paying necessary search fees. The receipt of payment of search fees is on record. Relying upon the search report submitted by the search

clerk, the Applicant certified that the title of the borrower on the basis of the Agreement for Sale produced with the Bank was clear.

4. It is difficult at this stage to accept that it was the duty of the Applicant to ascertain whether the documents which were forwarded by the Bank were genuine documents. It must be noted here that in the title report, the Applicant has added a note of caution that it will be advisable to obtain No Objection Certificate from the Promoter to mortgage the said flat in question. At this stage, there is no material on record to show that the Applicant is part of the conspiracy by the co-accused. At highest what can be said is that the title investigation report submitted by the Applicant is incorrect or that the Applicant has not performed his duty properly.

5. In my view, this is not a case where custodial interrogation of the Applicant will be required, especially, when all the documents are already seized by the Investigating Officer. However, the Applicant will have to attend the concerned Police Station and co-operate for investigation.

6. Hence, I pass the following order:

: O R D E R :

i) In the event of the arrest of the Applicant in

connection with C.R.No.176 of 2005 registered with Pantnagar Police Station, the Applicant shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.15,000/- with one or two local sureties in the like amount.

ii) The Bail is granted subject to condition that till the completion of investigation, the Applicant will attend the concerned Police Station on every day between 04.00 p.m. to 06.00 p.m. and will co-operate for investigation.

iii) The Bail is granted subject to condition that the Applicant shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/Investigating Agency. The Applicant shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicant only till chargesheet is filed. Thereafter, he will be free to apply to the appropriate court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE